

After recovering from a serious car accident in which he fractured his right shoulder, broke a bone in his left hand, and shattered his right hip, claimant returned to work for the respondent. He then terminated his employment with the respondent to work for another employer. When stipulations were taken before the regular hearing, the parties stipulated to a 20 percent whole body functional impairment rating. Further, claimant advised the Judge that he was not seeking permanent partial general disability benefits that exceeded the functional impairment rating. The parties also stipulated to an average weekly wage

that would result in the maximum weekly temporary total and permanent partial general disability benefit.

After finding that claimant was not making a claim for work disability and that he returned to work earning a wage either comparable or greater than the average weekly wage he was earning when he was injured on March 4, 1996, the Judge awarded claimant permanent partial general disability benefits based upon the stipulated functional impairment rating.

Respondent and its insurance carrier contend the Judge erred by failing to find that claimant returned to work for the respondent, earned comparable wage, and later voluntarily terminated. Claimant, on the other hand, now requests interest pursuant to K.S.A. 44-512b. He contends there has not been any dispute that his permanent partial general disability rating is 20 percent since the October 15, 1997 prehearing settlement conference. Therefore, he contends he is entitled to receive interest from that date.

The only issues before the Board on this appeal are:

- (1) Did the Judge err by failing to make a specific finding that claimant voluntarily quit an accommodated job that paid a comparable wage?
- (2) Is claimant entitled to interest commencing October 15, 1997, on his permanent partial general disability benefits?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds that the Award should be affirmed.

- (1) When stipulations were taken by the Judge at the regular hearing, the parties agreed that Mr. Kuepker's permanent partial general disability benefits were limited to his 20 percent functional impairment rating. The parties also agreed to an average weekly wage that was sufficient to qualify for the maximum weekly temporary total and permanent partial general disability benefit.

The Workers Compensation Act provides that individuals who return to work and earn at least 90 percent of the average weekly wage that they were earning on the date of accident are limited to permanent partial general disability benefits based upon their functional impairment rating.<sup>1</sup> Judge Barnes found that provision applied and, therefore, limited Mr. Kuepker's permanent partial general disability award to the 20 percent functional impairment.

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<sup>1</sup>K.S.A. 44-510e .

Respondent and its insurance carrier contend the Judge erred by failing to find that Mr. Kuepker voluntarily quit an accommodated job that paid a comparable wage. They concede that the requested finding does not affect the benefits that Mr. Kuepker is presently entitled. They, however, contend that such finding would preclude Mr. Kuepker from ever seeking review and modification of the permanent partial general disability percentage.

The Appeals Board concludes that Judge Barnes did not err by failing to address or make the specific finding that is requested.

First, the Appeals Board disagrees that the requested finding would forever bar Mr. Kuepker from seeking review and modification of his permanent partial general disability rating. Neither the Board nor the parties are able to foresee the future. Therefore, it is not possible to conclude that facts or circumstances would never exist that would justify modification of the disability rating.

Second, under these circumstances, the Appeals Board would be providing an advisory opinion, which the Board does not do, if it were to make the requested finding. Here, Mr. Kuepker's award is not affected by the finding requested. The Division should neither be expected nor required to make findings that do not affect the benefits awarded.

(2) Citing K.S.A. 44-512b, Mr. Kuepker now requests interest on all unpaid benefits. The issue was not raised before the Administrative Law Judge as it was raised for the first time in the appeal to the Board.

The Appeals Board's jurisdiction and authority is limited by statute. The legislature has specifically limited the Board's review to those legal and factual questions that were presented to the Administrative Law Judge.<sup>2</sup> The rationale behind that limitation is that the parties should have an opportunity to present evidence to the Division on the issues raised, which they cannot do before the Appeals Board.

Because the request for interest was not presented to the Administrative Law Judge, the Appeals Board declines to review it at this time.

### **AWARD**

**WHEREFORE**, the Appeals Board affirms the Award dated April 30, 1998, entered by Administrative Law Judge Nelsonna Potts Barnes.

**IT IS SO ORDERED.**

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<sup>2</sup>K.S.A. 1997 Supp. 44-555c(a).

Dated this \_\_\_\_ day of December 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Gary K. Jones, Wichita, KS  
Jon E. Newman, Wichita, KS  
Nelsonnna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director